

## **“COMMAND COLLEGE ARTICLE CLASS 39”**

**DANIEL S. LLORENS**

***“Can local police be effective within their communities as they help enforce federal immigration laws?”***

“I've spoken of the shining city all my political life...in my mind it was a tall proud city built on rocks stronger than oceans, wind-swept, God-blessed, and teeming with people of all kinds living in harmony and peace, a city with free ports that hummed with commerce and creativity, and if there had to be city walls, the walls had doors and the doors were open to anyone with the will and the heart to get here.”

Ronald Reagan, January 11, 1989

### **Introduction**

The United States of America is known for its ideals. Some of our greatest ideals are etched in our founding documents, such as the Declaration of Independence, the Bill of Rights and the Emancipation Proclamation. Some of our ideals have been embodied in the sacrifice of patriots, such as the work of the Greatest Generation in destroying the Axis Powers in World War Two or our status as “the shining city.” Among those ideals is that we are a nation of immigrants.

School children are taught Emma Lazarus’ poem at the feet of Lady Liberty; “bring us your tired, your poor, your huddled masses, yearning to breathe free...” For many, this ideal represents the greatness of our nation’s past and our brightest hope for our future. As the population of this country reaches 300 million, many Americans have begun to believe space and resources have reached a breaking point and the golden gates to the greatest nation on Earth should be shut tight.

The United States, in word and deed, is a home to many immigrant pathways. These divergent paths are contextually unfocused without including the underlying socio-political conditions of the time. In our history, especially in California, the arms welcoming immigrants have been folded from time to time, leaving many at the border’s doorstep. (Federation for American Immigration Reform, Fairus.org, 2006) The current illegal immigration across our southern border is unprecedented in part because those seeking to cross over have stopped taking “no” for an answer.

Along the front lines of this debate are millions of illegal immigrants who have sought a better life by entering this country by any means necessary. Conversely, federal and state law enforcement is charged with enforcing America’s borders, and is caught in the crossfire between immigrants and those who would close borders to prevent their entry into the country. Framed inside this larger debate is the emerging demand for local police to enforce federal immigration laws. This sub-debate and the accompanying

cacophony of voices have effectively rendered rational discourse difficult, if not impossible.

This article will analyze the potential for local police to enforce certain federal laws to further their greatest goal, public safety, through cooperative policies between a local police department and the Immigration and Customs Enforcement (I.C.E.) to accomplish two objectives. First would be the cross-training of local cops in immigrations laws, procedures, and databases. Secondly, protocols would be established to ensure persons arrested by that department would be screened for immigration status and transferred to the custody of I.C.E, if necessary. We will also explore the pros and cons of accomplishing that mission without destroying the credibility and standing of local police in the community. These objectives will be assessed against one of the major issues of the immigration debate: will enforcement of federal immigration laws impact the frequency of criminal conduct by those persons in the country illegally?

### **Impact of Illegal Immigration on Crime**

Americans must come to an understanding of differing positions regarding immigration policies and practices, and influence policy makers who decide where, and how, local law enforcement resources should be spent. As a first step into our assessment, we should frame the depth of the issue. The Pew Hispanic Center has provided some welcome facts into this debate. They report that about 12 million illegal immigrants currently live in the United States. About half entered through our poorly guarded southern border. The Center reports most illegal immigrants come from Latin American countries, mostly Mexico, and most are poorer and less educated than legal immigrants. ("2006 National Survey of Latinos", *The Pew Hispanic Center*, 2006)

Any argument which favors some level of cooperation between federal and local police authorities to enforce immigration laws should eventually ask and answer two questions:

Number 1:

"Is there an intrinsic benefit to this policy which supports the goal of public safety?

Number 2:

"Does the presence of tens of millions of illegal immigrants constitute a public safety concern that manifests itself in crime trends? Since local police have the obligation to impact crime, isn't their role properly to help enforce federal immigration laws?

These questions will serve as a foundation to determine whether the mere presence of a significant number of illegal immigration has a negative impact on public safety.

The argument in favor of the first question is often based on a political point of view. Adherents believe that the rule of law should prevail, and that local police should stop “taking the Fifth” on federal immigration laws. They believe illegal immigration should be addressed by local authorities because federal authorities have been ineffective at stemming the tide of illegal immigration.

Arguing in favor of the second question is slightly more complicated, since the response lies in what is perceived as the role of local law enforcement. Anecdotal evidence suggests local cops want desperately to stay out of the business of deporting illegal immigrants. Some believe this new role would crush their credibility within the community, and chill the relationship between the police and potential victims and witnesses, especially in Latin communities. (“Group is Cool to Sheriff’s Plan”, John MacDonald, *Orange County Register*, 2005) Others believe local police are negligent if they don’t actively investigate the immigration status of certain individuals.

Heather MacDonald, writing in the City Journal, quoted the following statistics in 2004:

“In Los Angeles, 95 percent of all outstanding warrants for homicide (which total 1,200 to 1,500 of all current warrants) target illegal aliens. Up to two-thirds of all fugitive felony warrants (17,000) are for illegal aliens.

A confidential California Department of Justice study reported in 1995 that 60 percent of the 20,000-strong 18th Street Gang in southern California is illegal; police officers say the proportion is actually much greater. The bloody gang collaborates with the Mexican Mafia, the dominant force in California prisons, on complex drug-distribution schemes, extortion, and drive-by assassinations, and commits an assault or robbery every day in L.A. County. The gang has grown dramatically over the last two decades by recruiting recently arrived youngsters, most of them illegal, from Central America and Mexico.

The leadership of the Columbia Lil’ Cycos gang, which uses murder and racketeering to control the drug market around L.A.’s MacArthur Park, was about 60 percent illegal in 2002, says former assistant U.S. attorney Luis Li. Francisco Martinez, a Mexican Mafia member and an illegal alien, controlled the gang from prison, while serving time for felonious reentry following deportation. (The City Journal.com)”

The USA Today reported in March of 2006 that 25 percent of 19,000 Los Angeles County Jail inmates are illegal immigrants. (The USA Today.com)

Former Washington Heights Police Chief Jim Kouri quoted the following in an article in MichNews.com:

“Sixty-one percent of (Michigan) defendants had been convicted at least once; 18%, 5 or more times; 26%, 2 to 4 times; and 17%, 1 time. Of those charged, 49% had previously been convicted of a felony: 20% of a drug offense; 18%, a violent offense; and 11%, other felony offenses. Twelve percent had previously been convicted of a misdemeanor.

Fifty-six percent of those charged with a reentry offense had previously been convicted of a violent or drug-related felony.”

Given the prevalence of warrants outstanding in Los Angeles, the jail population data and anecdotal evidence from Michigan and elsewhere, it is obvious that some persons residing in the United States illegally have turned to a life of crime. This argument can be made without singling out an ethnic group, since research indicates that crime transcends race and ethnicity (Hawkins, Laub, Lauritsen, and Cothorn, 2000). When considering local cooperation with I.C.E. to remove lawbreakers for the community, it is counter-intuitive to suggest that turning a blind eye to this tool would not have a positive effect on that community.

### **Does Local Law Enforcement Have a Role or Responsibility?**

Local law enforcement should not only help enforce federal immigration laws, they are uniquely and properly positioned to do so. Across the Southwestern United States, local police are in daily contact with tens of thousands of illegal immigrants. These contacts may or may not be enforcement-related. The local police investigate crimes in which immigrants are victims, and they teach their kids D.A.R.E. From time to time police also have occasion to arrest illegal immigrants for misdemeanors and felonies. In short, they interact with them on hundreds of levels, just like any other service population demographic. Opponent of this role for local police find no legal precedence which restricts this liaison with federal authorities such as Immigration and Customs Enforcement. Indeed, federal law explicitly permits “cross designation training” between I.C.E. and local police. (Title 8, United States Code Section 287(g)). Such a relationship, established through a memorandum of understanding, would in be in order to accomplish this mission.

The question seems to be; do local police have a role as enforcers *despite* the potential negative impact in their standing in the community? This role will in all likelihood adversely affect the standing of local police with some in minority communities. In the past, local police may have cooperated with immigration authorities on an informal basis. This emerging role is distinct in at least one way; the current political climate which contrasts a nation in time of war and determined advocates who support or oppose illegal

immigrants. Acknowledging the political realities of the time is one way in which law enforcement defines their own role in the community. Examining the basic role of local police in the community will help us place community concerns in perspective.

If the community identifies a safety concern, it is the local cops who get called. Is there a traffic problem on a given street? Call the police. Is there a crack house that just opened for business in town? Call the police. Is there a huge influx of illegal immigrants into the community, many of which are committing crimes? Suddenly the answer is not so simple; opponents of a new policy to cooperate with I.C.E. maintain such a crossover would endanger public trust in the police. ("Costa Mesa Looks at Immigration Enforcement", *Orange County Register*, Jeff Overly, 2005)

A RoperASW poll in 2003 showed many American favor Congress passing a law requiring state and local government agencies to notify federal authorities and their local law-enforcement agency when they determine that a person is here illegally, or has presented a false identification document (88% agree; 68% "strongly" agree). In the same poll, those polled agreed Congress should pass a law requiring state and local governments, and law enforcement agencies, to apprehend and turn over to the INS illegal immigrants with whom they come in contact (85% agree; 62% "strongly" agree). (NPG.org, 2003) While there are other voices in this debate, this poll and others point to a constituency which demands action by law enforcement on this issue.

Roundups, workplace raids, or status checks on persons routinely contacted by the police should clearly be off the radar screen since such practices are routinely performed by federal immigration authorities. These federal officers are already positioned, trained and authorized to man these important security functions. Using hundreds of thousands of local police officers has the advantage of being a force multiplier of huge proportions. More officers placed in a position to support I.C.E. by deporting rapists or repeat drunk drivers *will* make communities safer. No matter how loud the histrionics, the police should make that point loud and clear. Indeed, the police should focus, laser-like, on the goal of public safety.

Trying to quantify this loss of trust, however, is problematic. Police managers seeking to balance trust versus duty in this scenario will find themselves grasping at straws. In regards to a proposed partnership between local and federal authorities in Costa Mesa, California, an Orange County activist, Nativio Lopez, was quoted in USA Today; "'The policies are already having the effect of loss of confidence in the police". (The USA Today.com, 2006) Mr. Lopez' view is emblematic of the quandary facing police managers. How can a police manager possibly quantify this "loss of confidence"? There are no surveys, no polls, and no statistics that can logically define this position. Regardless, police managers are asked to stake out a claim in this debate based on the mother of wild guesses; "what would the net negative impact on community relations of a policy?"

### **What Should the Local Police Be Doing, if Anything?**

The following sample policy would highlight the desire of local police to positively impact crime while maintaining an evenhanded and supportive attitude towards members of the service population who happen to be illegal immigrants.

- Establishing a formal relationship with Immigration and Customs Enforcement through a Memorandum of Understanding, similar to existing relationship between local cops and the Drug Enforcement Administration or Bureau of Alcohol, Tobacco, and Firearms.
- The MOU should establish a minimum training requirement for line officers, jail deputies, or corrections personnel.
- Training should include a questionnaire protocol for arrested persons, and subsequent access to appropriate federal databases.
- The policy should address logistical issues such as staffing, housing and transportation.
- The policy will limit the use of the questionnaire to persons already in custody for other offenses.

In essence, local police must take the offensive on this program. The Chief, the command staff, and the line offices must be united in their efforts to;

- Establish a clear and well defined policy, understood by all; no mistakes allowed here, officers should understand their role and limitations.
- Have procedures in place which assure rights protection for those detained; invite advocate groups to the jail; let them see the process in action.
- An audit feature which tracks results and assures compliance; get another branch of the federal government involved, such as the Department of Justice's Civil Rights Division to review practices and procedures.
- Commit to regular public and private meetings with community members to provide performance "report cards"; create an advisory committee that the Chief can rely on to get the true pulse of the community.

Dr. Kris Kobach, writing for The Center for Immigration Studies, put it this way:

"The two and a half years that have passed since September 11, 2001, have yielded a wealth of cases in which the arrest of an alien by a state or local police officer was crucial in securing the capture of a suspected terrorist, a career criminal, or an absconder fleeing a final removal order. The role that state and local police officers play simply cannot be overstated. They are the eyes and ears of law

enforcement that span the nation. They are the officers who encounter aliens in traffic stops and other routine law enforcement situations. Federal law enforcement officers simply cannot cover the same ground." ("A Unified Approach for Stopping Terrorists", Kris Kobach, 2004)

What should the police be doing? They should screen persons they have already arrested to determine immigration status. This screening process requires training and a strong liaison with I.C.E. and other federal agencies. Currently, there are only a handful of local officers in the United States who are "cross-designated" to enforce immigration laws, and those officers are almost all in specialized task forces or jail deputies. (Freedom of Information Act Response by Department of Homeland Security, *JudicialWatch.org*, 2006)

Law enforcement clearly has the burden to define their role in clear terms. Local police should make clear they will not question victims or witnesses as to their status, for minor offenses such as jaywalking, open containers, or if they file a personnel complaint. This is necessary because inquiring as to immigration status under these conditions serves no community safety purpose.

### **The Costa Mesa Experience**

The City of Costa Mesa's foray into this issue is demonstrative of potential obstacles and pitfalls that can occur. The City of Costa Mesa, California is awaiting federal approval of their controversial plan to screen arrestees for immigration status "There has been a demand from the public for this type of enforcement," Costa Mesa Mayor Mansoor says. "The federal government has certainly dropped the ball, and we are seeing the impact of it in our community." (The USA Today.com, 2006)

Costa Mesa Police were not the first Orange County agency to contemplate a cooperative local and federal effort in recent times. The Anaheim Police Department gained national attention when it brought immigration officers into their own jail to screen arrestees. The Orange County Sheriff's Department was already researching a similar policy when Mayor Mansoor tabled his controversial version. Mayor Mansoor, a Sheriff's Deputy himself, was able to convince a narrow majority (3-2) of his fellow City Council members to approve a policy which resembles the one outlined above in early 2006.

### **Opposition and Cooperation**

In all three jurisdictions, the local police dealt with vocal and passionate opponents who disapproved of the policy. In all three cases, policy makers were warned that such cooperation between local and federal authorities would lead to a disintegration of trust between minority communities and the police. In addition, concerns were raised that some officers might use a new policy to racially profile persons, leading to a degradation of civil rights. Others complained that local police resources would be impacted, and

questions were raised regarding funding for the effort. Still other members of the community wholly applauded the efforts and supported the plan.

Anaheim police and the Sheriff's department leaned heavily on their local community members in the form of advisory committees which were empanelled in part to work through the issue. While these initiatives were police department driven, Costa Mesa's plan was introduced by the Mayor. Once approved, it became the police department's responsibility to put the plan into practice.

Clearly, cooperation and communication between the City's political leaders and police management is essential. If the impetus for the policy comes from police management, politicians and the City Manager or Administrator must be in on the discussions sooner rather than later. Additionally, empanelling an advisory committee will serve to provide police managers with an opportunity to give and receive unfiltered information to community members.

A plan should be in place to allay concerns about diffusion of department resources; budgeting and staffing issues should be addressed. Some organizations may find it impossible to enact a cooperative effort without federal grants or a budget increase to pay for potential costs.

## **Conclusion**

While the question prompting this study of immigration policies was "what would the impact be of local law enforcement enforcing federal immigration laws", the debate is complex and may be defined in many other terms. Like the mythical Hydra which terrorized the ancient Greeks, this issue, like few others, seems to branch out and grow into new and troublesome areas even as other issues are settled.

Our country's diverse opinions on this issue do little to help those entrusted with enforcing its laws. Much like the debate over the War on Drugs, or victimless crimes, the role or reach of police is at issue. Both sides of the debate have vocal constituencies. To take legal action against people who want to work and provide for themselves while entire markets feed and flourish on cheap labor is counter-intuitive to most police officers. Simply put, it offends a cop's sense of justice. This perceived injustice, however, does not ethically relieve the police from their duty to uphold the law.

Many community members demand that their police officers partner with immigration authorities to "do something" about illegal immigration. We have tried to define that "something" as a policy to screen persons arrested or convicted for unrelated crimes to determine their immigration status. Those found to be in the country illegally are handed over to I.C.E. for disposition; probably deportation. As expected, this policy will have consequences, not all of which are known at this time.

Police Departments, despite misgivings, may be required to make this work. Influential constituencies, who don't demonstrate with signs but do show up to vote, may demand



action from their local policing agency. What might result, then, when officers, trained by I.C.E., and duly authorized, begin reporting illegal immigrants in their custody to federal authorities? Certainly there will be wariness towards police from some community members. Among some advocates the police will face determined opposition. This opposition should be addressed with an open ears and a clear policy. The “ears” or community interaction must be genuine and the policy rigorously followed.

No police organization ever defined success as stopping *all* crime. Similarly, local law enforcement should define the issue before it’s defined by others. The police protect lives and property, and reporting illegal immigrants who are arrested for other offenses will make communities safer. To the degree this message is true in practice as well; local law enforcement may succeed in their ultimate goal of public safety, even while displeasing those who will benefit most from a safer community.